

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

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| RAFAEL PARADA-MENDOZA, | : | |
| Plaintiff | : | CIVIL ACTION NO. 3:22-771 |
| v. | : | (JUDGE MANNION) |
| UNITED STATES, <i>et al.</i> , | : | |
| Defendants | : | |

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick which recommends that the defendants' motion to dismiss and for summary judgment be granted. (Doc. 21). Neither party has filed objections to Judge Mehalchick's report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. Fed. R. Civ. P. 72(b), advisory committee notes; see also *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept,

or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. '636(b)(1); Local Rule 72.31.

The plaintiff brought the instant action asserting both *Bivens*¹ claims and claims under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §1346. The plaintiff’s complaint relates to another action filed in this court titled *Bran v. United States*, Civil Action No. 3:22-755.

The defendants filed a motion to dismiss and for summary judgment. After briefing of the motion, Judge Mehalchick prepared the instant report in which she recommends that the defendants’ motion be granted and the instant action be closed. In doing so, Judge Mehalchick determined that the plaintiff’s *Bivens* claims for money damages against the defendants in their official capacity are barred by sovereign immunity. Judge Mehalchick determined that the plaintiff’s FTCA claims should be dismissed because he failed to file an administrative claim regarding the issues raised in the instant complaint prior to filing the instant action. As to any claims for compensatory damages for mental or emotional injuries, Judge Mehalchick found that the plaintiff does not allege that the defendants, by way of their alleged unconstitutional conduct, caused him any kind of more-than-de-minimus

¹ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

physical injury and, as such, his request for compensatory damages should be denied. As to his request for injunctive relief, Judge Mehalchick determined that the plaintiff has no right to any particular security classification or to be placed in any particular prison. As a result, his request for transfer to a general population prison should be denied. Finally, Judge Mehalchick recommends that the plaintiff's complaint should be dismissed to the extent that, Jose Bran, the inmate plaintiff in the related case of *Bran v. United States*, is attempting to bring claims on the plaintiff's behalf or serve as his layman representative.

No party has objected to Judge Mehalchick's report and recommendation. Upon review, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Mehalchick to her conclusions. As such, the court will adopt Judge Mehalchick's report and recommendation as the decision of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Mehalchick (Doc. 21) is ADOPTED IN ITS ENTIRETY AS THE DECISION OF THE COURT.**
- (2) The defendants' motion to dismiss and for summary judgment (Doc. 16) is GRANTED.**

(3) The Clerk of Court is directed to **CLOSE THIS ACTION**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: August 30, 2023

22-771-01